IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Civil Second Appeal No.209/1984

Moorti Shri Adeshwar Bhagwan, Jain Swetamber Mandir,
Mohalla Gopalgarh, Bharatpur
...plaintiff-appellant
Versus
Shimbhunath Singh S/o Shri Subedar Padam Singh
...defendant-respondent

Date of Judgment ::: 23.8.2006

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri A.K. Bhandari, Sr. Advocate, with
Shri Rizwan Ali for plaintiff-appellant
Shri Rajendra Prasad for defendant-respondent
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By the Court:-

Heard learned counsel for both the parties.

The plaintiff-appellant filed a Civil Suit No.269/66 (50/76) for declaration and permanent injunction in the lower court in respect of the property, in dispute, which was decreed by the court of Additional Munsif No.2, Bharatpur, (for short, 'the lower court') vide its judgment and decree dated 10.5.1977. Being aggrieved with the same, an appeal was preferred by the defendant before the District Judge, Bharatpur, which was transferred for its decision to the Additional District Judge No.1, Bharatpur (for short, 'the first appellate court'). The first appellate court vide its judgment dated 24.4.1984 allowed the appeal and set aside the judgment and decree passed by

the lower court. Hence, this second appeal has been preferred by the plaintiff.

This court, vide its order dated 31.10.1985, admitted this second appeal and formulated the following substantial questions of law:-

> "(i) Whether the learned Judge misconstrued the document marked Ex.3 and erred in holding that the same being unregistered can be looked into only for collateral purposes.
>
> (ii) Whether the finding of the learned Judge regarding ownership of the respondent on the disputed land is based on no evidence.
>
> (iii) Whether the finding regarding adverse possession of Shri Padam Singh is also based on no evidence."

During the course of arguments the learned counsel for both the parties agreed that Exhibit-3, gift-deed dated 16.2.1908, executed by Mst. Koka Devi in favour of the plaintiff-appellant, was not required to be registered and the same was admissible in evidence and was rightly marked as Exhibit in the case in view of the judgments in the following cases -

1. Idol of Shri Narsinghji Maharaj and Others Vs. Prabhati Vaish – 1986 RLR 561.

2. Tangella Narasimhaswami,

Dharmakartha of Shri Kodanda Ramchandra Moorty Versus Madini Venkatalingam and Others – AIR 1927 Madras 636 (Full Bench).

In above referred both the cases it has been held that the dedication of property to God by a Hindu does not require any document and property can be validly dedicated without any registered instrument.

In view of the above decisions the question no.1 formulated by this court is answered that Exhibit-3, gift-deed dated 16.2.1908 executed by Mst. Koka Devi in favour of plaintiff Moorti Shri Adeshwar Bhagwan, is a document whereby disputed property was dedicated to God and was not required to be registered and was admissible in evidence for all purposes and not only for collateral purposes.

The learned counsel for both the parties contended that the judgment and decree passed by both the courts below be set aside and the case be remitted back to the first appellate court for deciding the first appeal filed by the defendant afresh on merits.

In view of the fact that both the parties have agreed for remit of the matter back for its decision afresh by the first appellate court, it is not necessary to decide the questions no.2 and 3 formulated by this court vide its order dated 31.10.1985.

Consequently, this second appeal is allowed. The impugned judgment and decree dated 24th of April, 1984 passed by Additional District Judge No.1, Bharatpur, in

Civil Regular Appeal No.59/77, are set aside and the case is remitted back to the court of Additional District Judge No.1, Bharatpur, with a direction to decide afresh the Civil Appeal No.59/77 filed by the defendant Shimbhunath Singh, on merits, on all the issues and keeping in mind that Ex.3, gift-deed, is admissible in evidence for all purposes.

Both the parties are directed to maintain the status quo in respect of the disputed property during the pendency of the appeal before the first appellate court.

The registry is directed to remit the record of both the courts below immediately to the Court of Additional District Judge No.1, Bharatpur. Both the parties are directed to appear before the said court on 9th of October, 2006.

There will be no order as to costs.

(Narendra Kumar Jain) J.

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